IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.28474 OF 2003
AND
CRL.M.P.No.7883 OF 2003 .

M.G.Singaravelu ... Petitioner

-Vs-

1.The State,
rep.by The Deputy Superintendent of Police,
Forest Cell CID.,
Vellore District,
Vellore.

2.The Forest Range Officer,
Alangayam.
(O.R.37/92-93) ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.G.Ethirajulu

For respondents : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

:O R D E R
The above criminal original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records relating to the order dated 18.6.2003 made in Crl.M.P.No.1987 of 2003 in C.C.No.1613 of 1992 by the Court of Special Judicial Magistrate, Tirupattur, Vellore District and set aside the same and direct the respondents to pay compensation.

2. On perusal of the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Government Advocate on the criminal side, it comes to be known that the petitioner was the first accused in the case registered by the respondents in C.C.No.1613 of 1992 before the Court of Special Judicial Magistrate, Tirupattur for the offences punishable under Section 120-B IPC, Sections 21(d),(e)(f) and Section

36(A) and (E) of the Tamil Nadu Forest Act and r/w.Rule 3(1) of the Sandalwood Possession Rules; that during investigation, the respondents seized and produced 48 sandalwood items before the Court as case property, which were in turn entrusted to the second respondent by the Court for safe custody; that after full trial, the said criminal case ended in acquittal by the judgment of the trial Court dated 28.9.2001, but since the trial Court has ordered confiscation of the said case property, the petitioner herein has preferred a Criminal Appeal No.114 of 2001 before the Court of the Principal Sessions Judge, Vellore and the said Court, by its judgment dated 24.4.2003, has allowed the appeal setting aside the order of confiscation passed by the trial Court further ordering return of the properties, seized and produced before the trial Court, to the petitioner herein and since the respondents have not preferred any revision against the judgment of the appellate Court, the said order has become final.

3. It further comes to be known that thereafter, the petitioner has filed a petition in Crl.M.P.No.1987 of 2003 under Section 452 Cr.P. C. before the Court below praying return of the properties to him wherein the second respondent has filed a reply stating that the properties concerned in the case have been destroyed by an accidental fire and hence the Court below, by its order dated 18.6.2003 had closed the said petition seeking return of property in its one sentence order. It is only aggrieved against the said order passed by the Court below, the petitioner has come forward to file the above criminal original petition on grounds such as that (i)the court below should have directed the respondents to pay compensation on the basis of the entrustment order made in C.P.No.1516 of 1992 by the Court below; (ii) that the court below has failed to note that the case properties were entrusted to the second respondent for safe custody and there is no occasion for him to store the same in the Additional Sandalwood Godown at Tirupattur and lost it in the fire accident; (iii) that the Court below has failed to note that the petitioner, being a licence holder to hold sandalwood as held by the lower appellate Court, is entitled for return of the same or compensation and non-awarding of the compensation amount is nothing but violation of principles of natural justice.

4. The second respondent has filed a counter thereby submitting that the properties were kept at Additional Sandalwood Department at Thirupattur along with other case properties where a fire accident took place on 16.3.1997 as a result of which the entire case properties were destroyed; that the District Forest Officer reported the incident to the Town Police Station, Thirupattur and a case in Cr.No.185/1997 was registered under Section 435 IPC r/w.120-B IPC and Section 3 of the Tamil Nadu Public Properties (Damage and Loss) Act; that the Government of Tamil Nadu also formed an enquiry commission and appointed a retired High Court Judge, The Honourable Mr.Justice A.Raman, as chairman of the commission to conduct an enquiry as to how the alleged incident took place and other circumstances and the said commission recommended the investigation by CBCID; that thereafter the case was transferred to the CBCID, Vellore, for further investigation; that it is understood that the CBCID, Vellore has also filed the final report before the Judicial Magistrate No.I, Thiruppattur after conclusion of their

investigation.

5. This respondent would further submit that the case properties were produced before the Special Judicial Magistrate, Thiruppattur and the learned Special Judicial Magistrate entrusted the case properties to the second respondent for safe custody only and during the year 1 997, the entire case properties were destroyed in the fire accident and in such circumstances, the return of properties claim does not arise; that the learned Special Judicial Magistrate had passed an order for confiscation of the properties; that Section 49(A) of the Tamil Nadu Forest Amendment Act 44/92 specifically authorise the forest officials to confiscate the case properties involved in the forest offences irrespective of launching of prosecution or not; that steps are being taken for filing a criminal revision case as against the order of the Sessions Court before the High Court. On such grounds, the respondents would pray to dismiss the above criminal original petition.

6. During arguments, the learned counsel for the petitioner would only trace those facts and circumstances pleaded in the above criminal original petition without having brought forth any new fact or circumstance nor any law pleaded and therefore tracing of the said arguments would only be a wasteful exercise and a time consuming affair since the pleadings have been traced already.

7. On the part of the learned Government Advocate, he would not only trace the facts but also would particularly point out that it is a mega scandal involving sandalwood worth Rs.100 crores and some firewood was set on fire showing the same as the sandalwood by some forest officials in connivance with some persons and Justice A.Raman commission appointed to enquire into the alleged incident indicated involvement of certain political elements as a result of which a case was registered and the investigation was entrusted to the CBCID, Vellore; that the learned Special Judicial Magistrate has passed an order confiscating the properties and that Section 49(A) of the Tamil Nadu Forest Amendment Act 44/92 specifically authorise the forest officials to confiscate the case properties involved in the forest offences irrespective of launching of the prosecution or not; that steps were being taken for filing a criminal revision case as against the order of the Court of Sessions and in these circumstances, the learned Government Advocate would pray to dismiss the above application filed under Section 482 of the Code of Criminal Procedure.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioner who is the first accused in C.C.No.1613 of 1992 before the Court of Special Judicial Magistrate, Thiruppattur, Vellore District has come forward to file the above criminal original petition praying to call for the records relating to the order dated 18.6.2003 made in Crl.M.P.No.1987 of 2003 in the said case by the Court of Special Judicial Magistrate, Thiruppattur, Vellore District and set aside the same and direct the respondent to pay the compensation.

9. In the said criminal miscellaneous petition, the petitioner herein would submit that the trial Court ordered Items 1 to 36, set out in C.P.1516 of 1992 be kept in the custody of the second respondent; that the Sessions Court has ordered return of the said properties and hence he would pray to return the said properties concerned with C.P.1516 of 1992 on the file of the Court of Special Judicial Magistrate for Sandalwood Offences, Thirupattur. In the s aid petition, the learned Magistrate has passed a crisp order stating that 'as per the reply of the Forest Range Officer, Alangayam, the properties concerned in the case have been destroyed by accidental fire. Hence, the petition is closed'. It is against this order passed by the said Court dated 18.6.2003 in Crl.M.P.No.1987 of 2003 in C. C.No.1613 of 1992, the petitioner has come forward to file the above criminal original petition praying to invoke the inherent powers of this Court conferred under Section 482 of the Code of Criminal Procedure praying for the relief extracted supra.

10. At the outset, it must be mentioned that the petitioner has not placed before this Court the case details, but only placing the orders passed by the Court of Sessions in Criminal Appeal No.114 of 2001 and the order passed by the Magistrate, extracted supra, and the petition filed by the petitioner in Crl.M.P.No.1987 of 2003 and based on the order of the Court of Sessions, the petitioner is claiming the return of the property with no other materials having been placed on record, particularly the judgment rendered by the trial Court, which is the base regarding the return of property wherein the learned Magistrate has arrived at the conclusion to confiscate the property to the Government besides acquitting the accused as it comes to be told.

11. It is further understood that based on the acquittal judgment rendered by the trial Court for the first accused, the petitioner herein, quoting the provision of law in an isolated manner, without consideration of the relevant provisions pertaining to the subject, the petitioner has filed the said petition simply stating that 'under Section 49(A) of the Tamil Nadu Forest Amendment Act 44/92, when the accused gets convicted, the properties seized could be confiscated to the Government', as though otherwise it is an entitlement of the accused to get the return of the property, in the event of his acquittal. If it is so, as per this analogy, even in the event where the property had been obtained by the accused on commission of a criminal offence such as theft, robbery, dacoity etc., just for the simple reason that he is acquitted technically, on account of the fact that the prosecution case has not been proved on their part, the accused would automatically become entitled for the return of the theft article and this is only a misconception of law. The answer is that even if an acquittal is registered, still, if the accused is not able to prove to the effect that the properties seized are lawfully belonging to him, he is not entitled to get the return of the property.

12. It is further relevant to point out that for getting the property returned in favour of the accused, even in the event that the accused gets an acquittal, if he is the lawful owner of the property seized from him, he has to initiate a separate proceeding under Section 4 52 of the Code of Criminal Procedure causing production of the authenticated documentary and

other evidence for himself being the owner of those articles and on a separate property enquiry held under the provisions of Section 452 Cr.P.C., conclusion has to be arrived at passing the order of the Court independent of the judgment delivered in the criminal case in which the petitioner was an accused and such procedure does not seem to have been either initiated by the petitioner or any enquiry seems to have been held by the trial Court regarding the contraband alleged to have been seized from the petitioner and the disposal of property has to be decided with opportunity to file revision before the Court of Sessions in the regular manner against the decision in the property case decided by the trial Court by the party aggrieved.

13. The first respondent has not filed an appeal in such a serious case in C.C.No.1613 of 1992 against the acquittal nor does he seem to have put up an effective defence before the Court of Sessions, Vellore giving the implications of law nor has he taken any step against the judgment passed by the Court of Sessions, Vellore in the socalled Criminal Appeal No.114 of 2001 dated 24.4.2003 and it could only be construed that the first respondent's negligence is deliberate, wanton and wilful and in order to help the petitioner to claim the contraband seized which were theft articles and not from the lawful possession of the accused, the petitioner herein, the bonafides of which he is yet to establish initiating a separate proceeding under Section 452 of Cr.P.C. This Court takes strong exception of the wilful negligence of the first respondent in total abhorrence of his duties and responsibilities thus helping the petitioner to obtain wrongful gains at the cost of the exchequer for which he has to be proceeded with, in accordance with the disciplinary proceedings in the interest of justice and fair play and in accordance with the procedures established by law.

14. It must be spelt out that the Court of Sessions should have clarified the position of law and rejected the appeal preferred by the petitioner since the Magistrate has got a right to arrive at his own conclusion to confiscate the properties seized from the accused in certain cases even if the case ends up in acquittal of the accused and regarding return of the property, a separate proceeding under Section 452 Cr.P.C., should have been initiated by the petitioner on conclusion of trial and only based on an order passed by the trial Court under separate proceeding for return of the property, a regular revision would lie. Therefore, it must be mentioned that the Court of Sessions, Vellore, has erroneously entertained the appeal which cannot lie before it at all so as to pass an erroneous order in the name of criminal appeal. The Court of Sessions should have clarified the legal position that in the case of the accused claiming the articles seized from him as unaccounted theft articles by the respondents, the accused/appellant has to initiate proceeding under Section 452 Cr.P.C. in order to prove his bona fide ownership and possession of the contraband seized. But, it has no right to arrive at an erroneous and improper conclusion that if any contraband is seized from an accused who is alleged to have been merely holding a licence to keep such articles, is entitled to the return of the same as though there is a guarantee that a licensee would not keep unaccounted theft articles of such kind, without even a property case initiated with the trial Court under Section 452 Cr.P.C. nor any decision being arrived at by the trial Court on such proceeding. Even if the claim of

the accused or third party claimant is dismissed by the trial Court on enquiry, only a revision would lie before the Court of Sessions and not an appeal as it has been preferred by the petitioner before the Court of Sessions below.

15. In such event, should not the accused prove to the satisfaction of the Court of trial that those items seized from him as theft items proving to the effect that the seized contraband either are covered by the licence or legally purchased and kept in his custody, filing the authenticated documents under which they were lawfully purchased? Then how, without going into such questions, the Court of Sessions simply stating that because he is a lice nce holder to keep sandalwood in his possession, the items seized were genuinely purchased under the cover of the licence and kept in his possession so as to pass an order of release of the items seized which is nothing short of an utter irresponsible and preposterous act committed on the part of the Court of Sessions betraying the trust and confidence entrusted with it by law. Even the respondents have failed not only to prefer a regular appeal against the acquittal of the accused but also negligent to file the appropriate revisional proceedings against such of the order passed by the Court of Sessions, Vellore testifying the validity of the same before the High Court and therefore there is reason to suspect whether there has been common understanding or nexus among all the three, the petitioner, the first respondent and the Sessions Judge concerned, without which in such a serious case wherein the properties are worth Crores of Rupees, no such slipshod or irresponsible order could be passed nor such negligence entertained by these guardians of law.

16. Therefore, without any proceeding initiated under Section 452 Cr.P.C., nor enquiry held nor any order passed on reasons assigned, no appeal could be preferred so far as the return of properties is concerned on an acquittal judgment rendered by the Magistrate further confiscating the seized sandalwood, since no materials have been placed before it to the ownership and lawful possession of the same by the petitioner and therefore, the Court of Sessions should not have gone up to the extent of ordering the return of the property as though it was sitting on revision on a regular order passed regarding the return of property in accordance with Section 452 Cr.P.C. after enquiry and hence the Court of Sessions should have pointed out the position of law on the subject and dismissed the erroneously preferred appeal proceeding initiated in the name of criminal appeal by the accused. Therefore, this Court is of the view that the entire proceeding initiated in the name of Crl.A.No.114 of 2001 on the file of the Court of Principal Sessions Judge, Vellore and the judgment dated 24.4.2003 rendered therein by the said Court thereby not only entertaining the Crl.A.No.114 of 2001 on its file, but also ordering return of property in the case in C.C.No.1613 of 1992 on the file of the Court of Special Judicial Magistrate, Tirupattur, gets vitiated on account of manifest illegality and irregular and erroneous procedure adopted which is unknown to law.

17. In these circumstances, since the properties are not returned to the custody of the Magistrate nor claimed by anyone being the lawful owner and in lawful possession of the same much less by the petitioner,

the first accused, under Section 452 Cr.P.C. with authenticated materials placed before the trial Court for proper appreciation of the same, the learned Magistrate is left with no choice but to pass an order of confiscation which is impugned herein since without the properties being in its custody or without the conduct of the enquiry under Section 452 Cr.P.C., he could not pass any other order than one passed by him which fact should have been apprised to the Court of Sessions by the petitioner and burking these facts, as though the properties were still in the custody of the lower Court, the petitioner had sought for a direction from the appellate Court for the return of the property setting aside the order of confiscation passed by the trial Court. Therefore, it must be held that the petitioner, on misrepresentation of facts, wilfully and in a wanton manner and in order to obtain wrongful gains, by manipulation and misrepresentation of facts and circumstances, adopting a wrong procedure, has filed the said appeal and in turn, the Court of Sessions, Vellore, also without analyzing the legalities and the fact situation, has passed a blind judgment in Crl.A.No.114 of 2001 which has no legal sanction or force, and in law, the judgment passed by the Court of Sessions is without jurisdiction, void at birth and unenforceable in law and gets vitiated on ground of illegality. In short, so far as the judgment passed by the trial Court in C.C.No.1613 of 1992 is concerned, the petitioner is not at all an aggrieved party since he got acquitted and regarding the properties seized and entrusted with the custody of the Court, unless he had claimed the same initiating proceeding under Section 452 Cr.P. C. and established his bonafides regarding his lawful ownership and possession, he had absolutely no right to claim the same much less preferring an appeal as he had done before the Court of Sessions and the said Court had also no right to entertain the said appeal and sit over the judgment and pass the erroneous judgment as though it is permitted by law to do so.

18. Moreover, the Court of Sessions, just for the simple reason that the petitioner is a licensee to possess the sandalwood, even without analysing whether the seized materials were lawfully purchased by him under the cover of the licence, has bluntly concluded that he would become entitled to claim the sandalwood seized from him and in fact, had he been in possession of the seized sandalwood in an authorised manner, he should have placed such materials before the lower Court for proper appreciation. But, without filing any scrap of paper, he had claimed the same to be that of his own simply stating that he is a licensee to keep sandalwood and therefore would become automatically entitled to get back the seized sandalwood which were illegally kept by him and therefore, he cannot assume himself to be the lawful owner of the sandalwood seized from his custody unless he is able to prove to the effect that the contraband seized from his custody were lawfully belonging to him, which could be done only in a separate proceeding initiated by the petitioner before the trial Court for the return of the property on conclusion of trial under Section 452 of the Cr.P.C. as aforementioned and since no such trial or enquiry has ever been initiated by the petitioner nor any order passed on such enquiry held regarding the return of property by the trial Court separately, the petitioner, under no circumstance, can imagine to claim the property seized in the manner that he had done filing the said appeal, nor could the Court of Sessions pass such an erroneous and illegal judgment on such improper and untenable proceeding initiated by the

petitioner.

19. Even in the event that the petitioner is able to prove to the effect that he is the lawful owner of the contraband seized, still, since it comes to be known that those contraband, while in the custody of the second respondent were lost, he could only claim compensation filing a suit for damages, causing production of such proof for being in possession of the same as their lawful owner and cannot pray to this Court to invoke its inherent powers to pass some untenable, evasive or colourable order which would mean only misuse of the lawful powers conferred on this Court.

20. In short, neither the petitioner is entitled to the seized contraband nor could he automatically become entitled to the seized contraband simply stating that he is licensed to keep such items with him, unless he proves to that effect, initiating appropriate proceeding under the relevant provisions of law for return of the property causing production of such authenticated documents of ownership and possession of the contraband seized and therefore in all respects, the above criminal original petition becomes liable only to be dismissed.

21. Many irregularities, improprieties and most irresponsible attitude have been exhibited dealing with such vital subject in a very casual manner forgetting the fact that because of such careless dealings of the guardians of law, valuable sandalwood worth more than Rs.100 cores to the estimated value decades back, had been lost under suspicious circumstances, the causes of which are yet to be unearthed and established, in spite of many make-believe exercises undertaken on the part of those who are in power and in such circumstances, besides the said colossal loss to the public property, now the petitioner herein has come forward to inflict some more loss to the Government money in the name of claiming the sandalwood seized from him without causing production of a scrap of paper for his ownership of the said contraband seized, purely encashing the unfaithful, unethical and careless attitude adopted on the part of both the respondents herein, the Public Prosecutor of the Court of Principal Sessions Judge, Vellore at the relevant time of passing of the judgment in Criminal Appeal No.114 of 2001 by the said Court in the most irresponsible manner as afore-discussed and decided thus giving way only for manipulators and anti-social elements to take advantage of and cla im valuable public money and property under the cover of judicial orders and therefore, it has become incumbent on the part of this Court to issue directions to the authorities concerned to initiate such disciplinary proceedings against all those who have either acted wrongly or in wilful and negligent manner so as to create a right in favour of the petitioner circumventing the law and procedure concerned with the subject absolutely bereft of merit or justification and becomes liable to be dismissed with exemplary costs and hence the following order:

In result,
(i) the above criminal original petition is without merit and the same is dismissed with a cost of Rs.10,000/= (Rupees Ten Thousand Only), which the petitioner shall pay to the credit of the Madras High Court Chief Justice's Relief Fund within fifteen days from the date on which this order copy is made

ready.

(ii) The judgment dated 24.4.2003 rendered in Criminal Appeal No.114 of 2001 by the Court of Principal Sessions Judge, Vellore, for the reasons assigned in the foregoing paragraphs, gets vitiated in law and is set aside.
(iii)The Government of Tamil Nadu shall initiate disciplinary proceedings against both the respondents and the Public Prosecutor of the Court of Principal Sessions Judge, Vellore, who appeared in Crl.A.No.11 4 of 2001 before the said Court, for having thrown the case of the prosecution at the feet of the petitioner, without properly projecting the same on merits and in accordance with law for their dereliction of duty.

Consequently, Crl.M.P.No.7883 of 2003 is also dismissed.

Index: Yes
Internet: Yes

Rao

To

1.The Chief Secretary to Government of
Tamil Nadu,
Fort St.George,
Chennai-9.

2.The Secretary to Government of Tamil Nadu,
Home Department, Fort St.George,
Chennai-9.

3.The Deputy Superintendent of Police,
Forest Cell CID.,
Vellore District,
Vellore.

4.The Forest Range Officer,
Alangayam, Vellore District.

5.The Principal Sessions Judge,
Vellore.
6.The Special Judicial Magistrate
Tirupattur,
Vellore District.

7.The Public Prosecutor,
High Court,
Madras.